Reply Form

**to the Consultation Paper on Draft technical standards amending Regulation (EU) 149/2013 to further detail the new EMIR clearing thresholds regime**

Responding to this Consultation Paper

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **16 June 2025.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

• Insert your responses to the questions in the Consultation Paper in this reply form.

• Please **do not remove** tags of the type < ESMA\_QUESTION\_CPCT\_0>. Your response to each question has to be framed by the two tags corresponding to the question.

• If you do not wish to respond to a given question, please **do not delete it but simply leave the text** “TYPE YOUR TEXT HERE” between the tags.

• When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_ CPCT\_nameofrespondent.

 For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ CPCT\_ABCD.

• Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at *www.esma.europa.eu* under the heading *‘Your input - Consultations’.*

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from financial and non-financial counterparties entering into OTC derivative transactions, as well as from central counterparties (CCPs).

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | EuropeanIssuers |
| Activity | Issuer (Other than SME) |
| Are you representing an association? |[ ]
| Country / Region | Belgium |

# Questions

1. Do you agree that the aggregate thresholds should only be set for those asset classes subject to the CO i.e. IRDs and credit derivatives? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_1>

As a general remark, EuropeanIssuers welcomes the opportunity to respond to ESMA's consultation on the draft technical standards under EMIR 3 on clearing thresholds (CT). We appreciate ESMA's efforts to expedite the issuance of RTSs following the EMIR 3 review and to base its draft on data and stakeholders’ consultation.

As the voice of listed companies across Europe, we emphasise the importance of ensuring that regulatory thresholds remain proportionate, risk-based, and supportive of non-financial counterparties' (NFCs) ability to access derivatives markets for legitimate risk management purposes. Any changes to the clearing threshold regime must avoid introducing excessive complexity or costs that could hinder corporate hedging or undermine the competitiveness of EU industry. In particular, the relevant changes to Article 10 (3) will determine significant impacts on processes and systems used by NFCs for threshold calculation and, ESMA should consider flexibility for minimising said impacts and for guaranteeing a smooth implementation.

Regarding Question 1, we agree that aggregate thresholds should be set only for asset classes subject to the clearing obligation (CO), i.e. interest rate derivatives (IRD) and credit derivatives.

Such selection of asset classes subject to CO is consistent with the new function played by CTs for Active Account Requirements (AAR), and the related need to ensure that Financial Counterparties (FCs) are not left out of scope of the CO and of the AAR, particularly those that may have large cleared portfolios and which may, therefore, not be captured by the uncleared CTs, as specified in the Executive Summary of ESMA's consultation paper.

<ESMA\_QUESTION\_CPCT\_1>

1. Do you agree with ESMA’s proposal to maintain the aggregate thresholds at the current level i.e. 3 billion EUR for IRDs and 1 billion EUR for credit derivatives? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_2>

Yes, we agree to maintain the aggregate thresholds at current levels for asset classes subject to the CO, since, based on the results of the quantitative analysis included in the consultation paper, it appears that the very large majority of notional trade is captured by the applicable CO. Therefore, the purpose of the aggregated calculation, i.e. the AAR needs of capturing FCs clearing large amounts of notional outside the EU, should be accomplished.

While we support the maintenance of current aggregate thresholds for IRDs and credit derivatives, we would strongly oppose any reduction in these levels. In fact, EuropeanIssuers believes that raising the thresholds should be considered, particularly for NFCs, whose role is fundamentally different from that of FCs and whose systemic relevance is limited.

Maintaining or increasing thresholds would ensure that NFCs are not subject to unnecessary clearing obligations, allowing them to continue hedging commercial and treasury risks effectively without being burdened by infrastructure requirements designed for financial market participants.<ESMA\_QUESTION\_CPCT\_2>

1. Do you agree with the proposed uncleared thresholds? If not, please elaborate, explain for which asset class(es) and, where possible, provide supporting data and elements.

<ESMA\_QUESTION\_CPCT\_3>

We do not agree with the proposed uncleared thresholds, when applied to NFCs.

We propose instead to apply for FCs the two different CTs, aggregated and uncleared, with the two proposed sets of thresholds, confirmed at current levels for aggregated CT and reduced for uncleared, while for NFCs we propose to apply one single CT, uncleared only, with the set of thresholds confirmed at current levels for all asset classes.

Rationale for EuropeanIssuers' proposal:

We understand that ESMA calibrated uncleared thresholds figures based on historical data, with the target to allow capturing a population of entities and notional similar to the one captured by aggregated thresholds for FCs. Again, this approach is consistent for FCs, for whom solely the two distinct thresholds, aggregated and uncleared, are applicable, in view of AAR.

For NFCs, the situation is rather different, since the AAR is less of a problem, and the main purpose of calculating the clearing threshold remains the original, i.e. reducing systemic risk by identifying systemically relevant counterparties that should clear uncollateralised OTC derivatives. For this very purpose, the new methodology defined in EMIR 3, that allows for the exclusion of cleared OTC derivatives, has been a clear and agreed improvement, given the evidence that cleared OTC derivatives are not adding any systemic risk. Reducing the threshold for uncleared OTC derivatives would contradict the spirit of incentivising the clearing performed by NFCs on part of their OTC derivatives. The clearing of OTC derivatives is performed by NFCs on a voluntary basis, often specifically for maintaining a safe room with respect to CT limits. Reducing the uncleared thresholds with respect to current levels would in essence transform into an indirect obligation for NFCs to clear the current amounts of OTC derivatives on a voluntary basis.

Moreover, analysis based on historical data shows that for NFCs both concentration and the systemic risk posed by the very few large players are less of a problem compared to FCs, and the proposed lower thresholds would significantly reduce the available capacity for NFCs to hedge their risks, especially in a volatile market environment. The risk of breaching thresholds due to non-systemic positions could discourage prudent risk management and lead to increased costs or reduced flexibility in hedging strategies.

We believe that thresholds for uncleared OTC derivatives should be at least maintained at current levels, if not increased, at least in periods of high volatility, as foreseen in Article 10(4)(c) of EMIR.

Moreover, it is useful to have in mind a comparison with the other regulatory frameworks (i.e. EMIR UK and US Dodd-Frank regulation), and how the discrepancies reduce the competitiveness for EU NFCs, entities which - under the current rules - are more likely to consume higher portions of the available thresholds.

In fact, EMIR imposes stricter requirements than those set by the US Dodd-Frank framework in terms of regulatory thresholds: the US threshold is higher than the EU’s for commodity derivatives, despite (i) only including uncleared contracts (as under the new EMIR requirements) and (ii) using a methodology that permits including into the calculation contracts for just a 12-month period (instead of including contracts for their entire life as under EMIR requirements).

That is why, while ensuring the shift in focus from OTC to cleared derivatives as proposed by EMIR 3.0, ESMA should consider an increase in the regulatory thresholds - or at the very least maintaining the current ones - and an alignment of the calculation methodology to the US method.

Based on the above, EuropeanIssuers' proposal for CTs during periods of normal volatility is contained in the following table:

|  |  |  |  |
| --- | --- | --- | --- |
|   | **FC** |   | **NFC** |
| *Asset Class* | **Aggregated** | **Uncleared** |   | **Uncleared** |
| Credit | 1 | 0,7 |   | 1,0 |
| Equity | n.a. | 0,7 |   | 1,0 |
| Interest Rate | 3,0 | 1,8 |   | 3,0 |
| Foreign Exchange | n.a. | 3,0 |   | 3,0 |
| Commodity and emission allowance | n.a. | 3,0 |   | 4,0 |

<ESMA\_QUESTION\_CPCT\_3>

1. Do you agree with ESMA’s proposal not to introduce in the RTS separate thresholds for the various commodity derivatives sub-asset classes at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_4>

Yes, we agree with ESMA’s proposal not to introduce more granular thresholds for commodity derivatives.

Segmenting thresholds by commodity sectors (e.g. agriculture, energy, metals) or based on ESG or other crypto-related features would translate into additional costs and burdens for both FCs/NFCs and ESMA/NRAs, linked to changes in formats for generating, collecting and reporting data for CT calculations and control.

We do not see, at the present stage, any additional benefits that would justify such an increase in cost. The current asset class structure remains fit for purpose, and any move towards increased granularity should be avoided.<ESMA\_QUESTION\_CPCT\_4>

1. Do you agree with ESMA’s proposal to have in the fifth bucket only commodity and emission allowance derivatives? Or do you consider that commodity derivatives should be singled out as a stand-alone category and another category for emission allowance derivatives introduced? Please elaborate.

<ESMA\_QUESTION\_CPCT\_5>

Yes, we agree with the proposal to cancel the 'other derivatives' category and to limit the fifth bucket to commodity and emission allowances derivatives only.

This simplification is consistent with the overarching objective of EMIR 3.0 to reduce unnecessary regulatory fragmentation and burden. Retaining the 'other' category would risk creating confusion around scope and threshold monitoring, especially for NFCs with limited compliance capacity.<ESMA\_QUESTION\_CPCT\_5>

1. Do you agree with ESMA’s proposal not to introduce a sixth bucket for other derivatives at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_6>

Yes, we support ESMA’s approach to refrain from introducing a sixth bucket of other derivatives at this stage.

In the future, should, for example, crypto-asset-based derivatives represent a significant new asset class, a specific sixth bucket could be considered, always taking into account the additional burdens for necessary changes to assessment and reporting frameworks.<ESMA\_QUESTION\_CPCT\_6>

1. Do you agree with ESMA’s proposal not to introduce more granular thresholds for commodity derivatives based on ESG factors at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_7>

Yes, we agree that ESMA should not introduce more granular thresholds for commodity derivatives based on ESG factors.

As highlighted in the consultation paper, introducing ESG-based thresholds for commodity derivatives would not improve systemic-risk oversight in any way but would add disproportionate compliance burdens for NFCs. Again, any change in CTs methodology and definition should always be consistent with CTs’ main objective, i.e. reducing systemic risk by identifying systemically relevant counterparties that should clear uncollateralised OTC derivatives.<ESMA\_QUESTION\_CPCT\_7>

1. Do you agree with ESMA’s proposal not to introduce more granular thresholds for commodity derivatives based on crypto-related features at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_8>

Yes, we agree with ESMA’s proposal not to introduce more granular thresholds for commodity derivatives based on crypto-related features.

Crypto-related OTC derivatives are not yet widespread in NFC hedging strategies and do not warrant separate regulatory treatment at this stage. Moreover, it is not clear why more granular thresholds based on crypto-related features would be introduced specifically and exclusively for commodity derivatives. Should future development of crypto-asset-based derivatives justify a specific assessment in terms of systemic risk, it would be more logical to consider the introduction of a sixth bucket of asset class (see also response to Question 6), rather than additional granularity on commodity only.<ESMA\_QUESTION\_CPCT\_8>

1. Do you consider clarifications should be included in Article 10 of Commission Delegated Regulation (EU) No 149/2013? If yes, please specify and if possible, provide arguments and drafting suggestions.

<ESMA\_QUESTION\_CPCT\_9>

We do not see the need for clarifications to be included in Article 10 of Commission Delegated Regulation (EU) No 149/2013, as the current text contains a broad, inclusive, and principles-based definition of hedging.

The current text encompasses the wide range of risk management practices used by NFCs, including proxy and portfolio hedging, and in our opinion, as confirmed by the EC answer, the current text also allows the use of Virtual Power Purchase Agreements (PPAs) as risk-reducing derivatives for both counterparties, i.e. the buyer and the seller of a PPA.

Criteria set out in Article 10 of Delegated Regulation (EU) No 149/2013 allow NFCs to demonstrate risk-reducing intent through internal risk management policies and documentation. Any more restrictive definition would undermine the ability of NFCs to hedge long-term risks effectively and could lead to unnecessary threshold breaches and systemic exposure.<ESMA\_QUESTION\_CPCT\_9>

1. Do you consider other indicators should be monitored and assessed? If yes, please specify and if possible provide drafting suggestion.

<ESMA\_QUESTION\_CPCT\_10>

We support the proposed qualitative and discretionary mechanism with a risk-based trigger approach, and we believe that indicators suggested by ESMA are fit for purpose, i.e. prices of underlying assets for all CTs asset classes and indicators contained in the Report on Trends, Risks and Vulnerabilities for financial stability risk.

We support the introduction of a minimum frequency for the assessment of said indicators and a clear maximum deadline for implementing the review, following a trigger event. For the assessment of prices of underlying assets, we propose a frequency of at least at least on a monthly basis, while for indicators of financial stability risk a biannual frequency could be sufficient, in line with the publication of the Report on Trends, Risks and Vulnerabilities. The review of CTs should be implemented by the month following the detection by ESMA of a trigger event, e.g. if a relevant change in the price of an asset class is detected in April, the review of the correspondent CT should take place at the latest by May.

Nevertheless, EuropeanIssuers acknowledges that CTs review is not an instrument to manage a sudden crisis and an emergency situation following price/volatility relevant spikes.

As a matter of fact, a relevant spike in volatility and price of an underlying asset would trigger two main risks to be managed:

I. the risk for NFCs to exceed CTs limits (and therefore being obliged to clear all their derivatives and being subject to more compliance), not because their systemic risk has increased but simply because the value of the underlying asset has structurally increased, due to price volatility;

II. the liquidity risk that NFCs and FCs will face for the margin calls on all open derivatives already cleared by CCPs (note that the first risk is procyclical with respect to the second because NFCs exceeding CTs limits would be obliged to clear relevant additional volumes of OTC derivatives).

The review of CTs can help manage only the first risk, given that CTs calculation is based on annual averages, therefore there is enough time for ESMA to detect a trigger event and implement CTs review, via a qualitative and discretionary mechanism, like the one proposed in the consultation paper.

For the liquidity risk of increased margin calls, instead, any mitigation action should be implemented theoretically intra-day, since margin calls are paid daily and price spikes of 100% or more can happen within one day, following for example a disruptive event or news. For managing such liquidity risk, quantitative and automatic mechanisms are needed at CCPs level, in order to suspend automatic exchange of cash collateral during emergency periods following a trigger event, e.g. when short term volatility exceeds confidence levels of models used for margin calculation.

In parallel to the introduction of the mechanism for CTs review, as foreseen in the new Article 11b, EuropeanIssuers urges ESMA to facilitate the introduction at CCPs level of quantitative mechanisms for managing liquidity risk during emergency periods. The introduction of such mechanisms does not require a specific RTS, since it could be included directly in CCPs’ Rule Books and technical proposals could be developed and discussed with all relevant stakeholders, taking advantage of specific technical committees such as ESMA Consultative Working Group for the CCP Policy Committee.<ESMA\_QUESTION\_CPCT\_10>